

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

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4 JPMORGAN CHASE BANK, N.A. and
5 FEDERAL HOME LOAN MORTGAGE
6 CORPORATION,

7 Plaintiffs,

8 v.

9 GDS FINANCIAL SERVICES,
10 LEODEGARIO SALVADOR, SQUIRE
11 VILLAGE AT SILVER SPRINGS
12 COMMUNITY ASSOCIATION, GARY
13 MCCALL, and DIANA MCCALL,

14 Defendants.

Case No. 2:17-cv- 02451-APG-PAL

**ORDER GRANTING MOTION FOR
SUMMARY JUDGMENT AND
DENYING MOTION TO DISMISS**

(ECF Nos. 28, 33)

14 The parties dispute whether a deed of trust still encumbers property located at 5023
15 Droubay Drive in Las Vegas following a non-judicial foreclosure sale conducted by defendant
16 Squire Village at Silver Springs Community Association (Squire Village). Plaintiff JPMorgan
17 Chase Bank, N.A. is the beneficiary of record for the deed of trust and is the servicer for plaintiff
18 Federal Home Loan Mortgage Corporation ("Freddie Mac"). The plaintiffs seek a declaration
19 that the deed of trust continues to encumber the property.

20 The plaintiffs move for summary judgment on the basis that the federal foreclosure bar in
21 12 U.S.C. § 4617(b)(2)(A)(i) precludes Squire Village's foreclosure sale from extinguishing
22 Freddie Mac's interest in the property. Squire Village filed a limited opposition, asserting it does
23 not oppose the request that the deed of trust continue to encumber the property, but it does oppose
24 any ruling that the foreclosure sale it conducted is void. ECF No. 31. Defendant GDS Financial
25 Services (GDS), a sole proprietorship owned by defendant Leodegario Salvador, purchased the
26 property at the foreclosure sale and is the current property owner. Salvador opposes the
27 plaintiffs' motion and moves to dismiss, arguing generally that he is a good faith purchaser and
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1 the dispute is really between the plaintiffs and Squire Village. He also raises a variety of other
2 arguments.

3 I deny Salvador's motion to dismiss and grant the plaintiffs' motion for summary
4 judgment. Freddie Mac's interest cannot be extinguished by a homeowners association (HOA)
5 sale under the federal foreclosure bar.

6 **I. BACKGROUND**

7 Defendants Gary McCall and Diana McCall obtained a loan in May 2005 from MIT
8 Lending to purchase the property. ECF Nos. 28-1 at 2; 28-2 at 4. The loan was secured by a deed
9 of trust encumbering the property. ECF No. 28-1 at 2. The deed of trust identified MIT as the
10 lender, Chicago Title Lender Source as the trustee, and Mortgage Electronic Registration
11 Systems, Inc. (MERS) as the beneficiary under the deed of trust solely as nominee for the lender
12 and its assigns. *Id.* at 2-3.

13 Freddie Mac purchased the loan and deed of trust on July 14, 2005 and has owned it since.
14 ECF No. 28-2 at 4. JPMorgan Chase is Freddie Mac's servicer for the loan. *Id.* at 5-6. On
15 March 25, 2011, MERS assigned the deed of trust to JPMorgan Chase. ECF No. 28-3. That same
16 day, JPMorgan Chase assigned the deed of trust to Chase Home Finance, LLC. *Id.* In August
17 2012, MERS re-assigned the deed of trust to JPMorgan Chase, the successor by merger to Chase
18 Home Finance. *Id.*

19 On May 2, 2011, defendant Squire Village recorded a notice of delinquent assessment
20 because the McCalls owed it unpaid assessments. ECF No. 28-4. Squire Village filed a notice of
21 default and election to sell based on the unpaid assessments on August 8, 2011. ECF No. 28-5.
22 Squire Village recorded a notice of sale a few weeks later, setting the sale for September 26,
23 2012. ECF No. 28-6. The property was sold on that date to GDS for \$5,100. ECF No. 28-7. On
24 December 13, 2013, JPMorgan Chase recorded a notice of default and election to sell under the
25 deed of trust. ECF No. 28-8. The plaintiffs filed this declaratory relief action on September 20,
26 2017. ECF No. 1.

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II. DISCUSSION

Summary judgment is appropriate if the movant shows “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a), (c). A fact is material if it “might affect the outcome of the suit under the governing law.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). An issue is genuine if “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Id.*

The party seeking summary judgment bears the initial burden of informing the court of the basis for its motion and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The burden then shifts to the non-moving party to set forth specific facts demonstrating there is a genuine issue of material fact for trial. *Fairbank v. Wunderman Cato Johnson*, 212 F.3d 528, 531 (9th Cir. 2000). I view the evidence and reasonable inferences in the light most favorable to the non-moving party. *James River Ins. Co. v. Hebert Schenk, P.C.*, 523 F.3d 915, 920 (9th Cir. 2008).

The federal foreclosure bar in 12 U.S.C. § 4617(j)(3) provides that “in any case in which [the Federal Housing Finance Agency (FHFA)] is acting as a conservator,” “[n]o property of [FHFA] shall be subject to . . . foreclosure[] or sale without the consent of [FHFA].” The plaintiffs argue that under the federal foreclosure bar, the HOA sale could not extinguish Freddie Mac’s interest in the property because at the time of the sale, FHFA was acting as Freddie Mac’s conservator and Freddie Mac owned an interest in the property.

The question of whether the federal foreclosure bar preserves Freddie Mac’s interest in this property following Squire Village’s foreclosure sale of its superpriority lien is controlled by *Berezovsky v. Moniz*, 869 F.3d 923 (9th Cir. 2017). In that case, the Ninth Circuit held that the federal foreclosure bar preempts Nevada law and precludes an HOA foreclosure sale from extinguishing Freddie Mac’s interest in property without FHFA’s affirmative consent. *Id.* at 927-31. That court accepted as proof of ownership the same type of evidence offered in this case. *Id.* at 932-33.

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1 Salvador does not dispute that Freddie Mac owned an interest in the loan and deed of trust
2 at the time of the HOA foreclosure sale other than to offer conclusory statements that (1) the loan
3 was securitized so the plaintiffs lack standing and (2) Freddie Mac “disowns defective loans” and
4 the “mere fact that the loan was foreclosed by [the] HOA evidently revealed that this loan was
5 supposed to be not traded in the stream of commerce.” ECF No. 32 at 2.

6 As to the first argument, Freddie Mac has presented evidence that at the time of the HOA
7 foreclosure sale, the loan was not securitized. ECF No. 35-1 at 4, 35. As to the second
8 contention, the HOA foreclosed because the McCalls did not pay their HOA assessments. This
9 has nothing to do with the loan to the McCalls or whether it was “defective.” Freddie Mac has
10 not disowned the loan at issue here. Instead, it sues to maintain its security for that loan.

11 Salvador offers no evidence raising a genuine dispute about Freddie Mac’s interest, and he
12 does not request relief under Federal Rule of Civil Procedure 56(d). Consequently, no genuine
13 dispute remains that Freddie Mac owned an interest in the property at the time of the HOA
14 foreclosure sale. Under the federal foreclosure bar and *Berezovsky*, this interest cannot be
15 extinguished without FHFA’s consent.

16 Salvador argues that this case cannot be resolved until the current split between state and
17 federal courts regarding the constitutionality of Nevada Revised Statutes Chapter 116 is settled.
18 *See Bourne Valley Court Tr. v. Wells Fargo Bank, NA*, 832 F.3d 1154, 1157 (9th Cir. 2016);
19 *Saticoy Bay LLC Series 350 Durango 104 v. Wells Fargo Home Mortg., a Div. of Wells Fargo*
20 *Bank, N.A.*, 388 P.3d 970, 973 (Nev. 2017) (en banc). However, I need not address that issue
21 because even if the state statutory scheme is constitutional, the federal foreclosure bar would
22 preclude the HOA foreclosure sale from extinguishing Freddie Mac’s interest.

23 Next, Salvador contends he is an innocent buyer and the dispute is really between the
24 plaintiffs and Squire Village. Salvador is arguing that he is a bona fide purchaser under Nevada
25 law. However, Nevada’s law on bona fide purchasers would be preempted for the same reasons
26 an HOA cannot foreclose on FHFA’s interests without consent. The federal foreclosure bar’s
27 “declaration that ‘[n]o property of the Agency shall be subject to . . . foreclosure’ unequivocally
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1 expresses Congress's 'clear and manifest' intent to supersede any contrary law, including state
2 law, that would allow foreclosure of Agency property without its consent." *Berezovsky*, 869 F.3d
3 at 930-31. Nevada's law provides that bona fide purchasers for value without notice¹ have
4 priority. *See Nev. Rev. Stat. § 111.325; Shadow Wood HOA v. N.Y. Cmty. Bancorp.*, 366 P.3d
5 1105, 1114 (Nev. 2016) (en banc). Allowing Nevada's law on bona fide purchasers to control in
6 this case would be "an obstacle to Congress's clear and manifest goal of protecting the Agency's
7 assets in the face of multiple potential threats, including threats arising from state foreclosure
8 law." *Berezovsky*, 869 F.3d at 931. Accordingly, Nevada's law on bona fide purchasers is
9 preempted by the federal foreclosure bar. *See id.*

10 Finally, Salvador asserts MERS's involvement in the chain of title is suspicious. But
11 Nevada law allows for MERS to act as agent for the note holder. *See In re Montierth*, 354 P.3d
12 648 (Nev. 2015) (en banc); *Edelstein v. Bank of New York Mellon*, 286 P.3d 249 (Nev. 2012) (en
13 banc). Salvador has not identified any specific aspect of MERS's conduct related to this property
14 that raises suspicion about the validity of Freddie Mac's interest in the property.

15 In sum, Salvador has not shown a genuine dispute exists that would preclude summary
16 judgment in Freddie Mac's favor under the federal foreclosure bar. I therefore grant the
17 plaintiffs' motion for summary judgment and deny Salvador's motion to dismiss.

18 **III. CONCLUSION**

19 IT IS THEREFORE ORDERED that defendant Leodegario Salvador's motion to dismiss
20 **(ECF No. 33) is DENIED.**

21 IT IS FURTHER ORDERED that plaintiffs Federal Home Loan Mortgage Corporation
22 and JPMorgan Chase Bank, N.A.'s motion for summary judgment **(ECF No. 28) is GRANTED.**
23 It is hereby declared that the homeowners association's non-judicial foreclosure sale conducted
24 on September 26, 2012 did not extinguish Federal Home Loan Mortgage Corporation's interest in
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27 ¹ There was some record notice that the loan might be sold to Freddie Mae. The deed of
28 trust, which was recorded long before Salvador, through GDS, purchased the property, states it is
a "Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS." ECF No. 28-1.

1 the property located at 5023 Droubay Drive in Las Vegas, Nevada, and thus the property is
2 subject to the deed of trust for which JPMorgan Chase Bank, N.A. is the current beneficiary of
3 record.

4 IT IS FURTHER ORDERED that on or before May 23, 2018, the parties shall file a joint
5 status report regarding what, if anything, remains of this case.

6 DATED this 1st day of May, 2018.

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ANDREW P. GORDON
9 UNITED STATES DISTRICT JUDGE